

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
NextG Networks of NY, Inc.,)	
)	
Complainant,)	File No. EB-07-MD-004
)	
v.)	
)	
Public Service Electric & Gas Company,)	
)	
Defendant.)	
)	

ORDER OF DISMISSAL

Adopted: May 2, 2008

Released: May 2, 2008

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

I. INTRODUCTION

1. On December 21, 2007, NextG Networks of NY, Inc. (“NextG”) filed a Complaint¹ against Public Service Electric & Gas Company (“PSE&G”) pursuant to section 224 of the Communications Act of 1934, as amended (the “Act”),² and section 1.1404 of the Commission’s rules.³ The Complaint alleges that NextG is violating section 224(f)⁴ by refusing to allow NextG to attach wireless telecommunications devices to the tops of PSE&G’s utility poles. On January 22, 2008, PSE&G filed a Response to the Complaint in which it asserted, *inter alia*, that the Commission should dismiss the Complaint for lack of jurisdiction pursuant to section 224(c)(1) of the Act and section 1.1406 of the Commission’s rules.⁵

2. On April 25, 2008, NextG and PSE&G filed a Joint Request to Withdraw Complaint with Prejudice.⁶ In their Joint Request, the parties state that they have reached a confidential settlement and have agreed to seek withdrawal of the Complaint with prejudice.⁷ The parties assert that withdrawal of the Complaint “will serve the public interest by eliminating the need for further litigation and the expenditure of the associated time and

¹ Complaint for Denial of Access to Utility Poles and Request for Expedited Treatment, File No. EB-07-MD-004 (filed Dec. 21, 2007) (“Complaint”).

² 47 U.S.C § 224.

³ 47 C.F.R. § 1.1404

⁴ 47 U.S.C. § 224(f). *See* 47 C.F.R. § 1.1403(a).

⁵ Response of Public Service Electric and Gas Company, File No. EB-07-MD-004 (Jan. 22, 2008) (“Response”) at vi, 13-34 (citing 47 U.S.C. § 224(c) (1) and 47 C.F.R. § 1.1406).

⁶ Joint Request to Withdraw Complaint with Prejudice, File No. EB-07-MD-004 (filed April 25, 2008) (“Joint Request”).

⁷ Joint Request at 1, ¶ 2.

resources of the parties and the Commission and will promote the private resolution of disputes.”⁸

3. We are satisfied that granting the Joint Request will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and the expenditure of further time and resources of the parties and this Commission.

4. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and sections 1.1401-1.1418 of the Commission’s rules, 47 C.F.R. §§ 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the Joint Request to Withdraw Complaint with Prejudice IS GRANTED.

5. 10. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and sections 1.1401-1.1418 of the Commission’s rules, 47 C.F.R. §§ 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that NextG’s Complaint against PSE&G IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau

⁸ Joint Request at 1-2, ¶ 3.